Re TAY TUAN DECD.

[O.C.J. (Adams J.) June 20, 1962]

[Muar — Petition for L.A. No. 98 of 1951]

Administration — Revocation of Letters of Administration — Preliminary steps to be taken — Procedure in administration proceedings.

The preliminary steps to be taken by a party who desires to obtain the revocation of a Grant of Letters of Administration are: (1) enter a caveat; (2) follow it with the extraction of a citation to the administrator to bring the grant into the Registry. This should be followed by the issue of an originating motion.

Procedure by way of motion in the administration proceedings is not correct.

MOTION.

D. A. Devadason for the applicant.

F. Keith Sellar for the petitioner.

Adams J. (delivering oral judgment): This is a motion for an Order that a Grant of Letters of Administration to the Estate of the deceased issued out of the Muar Registry on 28th July, 1952 be revoked and issued to the present applicant.

The procedure is misconceived. Before an action of this nature can be commenced there are certain preliminary steps to be taken. The party who desires to obtain the revocation must first enter a caveat and then follow it with the extraction of a citation to the administrator to bring the Grant into the Registry. This should be followed by the issue of an Originating Motion. Procedure by way of motion in the administration proceedings is not correct.

For the above reasons the motion must be dismissed. But even on the facts, the proceedings if they were in order would have to be dismissed because the applicant had deposed that the deceased to whose estate he seeks representation died in China on the 21st December, 1945 but the deceased in respect to whose estate the present grant refers died in Tangkak on the 10th December, 1949. This is proved by the certificate of death.

The applicant must pay the costs of these proceedings.

Order accordingly.

Solicitors: *D. A. Devadason; Sault, Keith Sellar & Co.*

Re SEMANTAN ESTATE (1952) LTD.

[O.C.J. (Ong J.) February 14, 1962]

[K.L. — Companies (Winding-up) No. 2 of 1961]

Company Law — Winding-up — "Just and equitable" — Strained relationship between directors — Impossibility to conduct business — Companies Ordinances, 1940 to 1946.

This was a petition to wind up a private company incorporated in 1952 with a fully paid-up capital of $1,000,000 divided into 1,000 shares of $1,000 each. The petitioner and one N.C.S., the subscribers to the Memorandum of Association, together with members of their respective families, held the shares equally. Differences arose between the petitioner and N.C.S. in 1957 and strained relationship between the parties gave rise to further grounds of dissatisfaction which have been assigned as additional reasons in support of the petition. The petitioner submitted that for these reasons it had become impossible to conduct the business of the company according to law and the regulations of the company and that in the circumstances it was just and equitable that the company should be wound-up.

Held: (1) on the facts of the case, the petitioner had been more unreasonable than co-operative, and any deadlock so-called was one created entirely by himself;

(2) wounded pride on the part of the petitioner over fancied slights could not make it "just and equitable" that the court should make the order which was sought;

(3) the interests of the share-holders must be considered, and in the circumstances of the case the court was not satisfied that it would be just and equitable to wind-up the company in so far as they were concerned;

(4) even regarding the private company as a partnership, the court will never permit a partner by rendering it impossible for his partners to act in harmony with him, to obtain a dissolution on the ground of the impossibility so created by himself;

(5) in the circumstances the company could carry on with advantage and profit to all its shareholders.

Case referred to:—

(1) *In re Yenidge Tobacco Co. Ltd.*, [1916] 2 Ch. 428, 432.

COMPANIES WINDING-UP.

Robert K. C. Hoh for the petitioner.

S. T. Chung for 3 contributories holding total of 450 shares.

C. H. Smith (*R. R. Chelliah* with him) for 10 contributories holding 445 shares.

Ong J.: The petition herein was presented by Ng Eng Hiam to wind up the above-named company on the ground that it was "just and equitable" that such an order should be made. At the conclusion of the hearing I dismissed the petition with costs.

The company, which is a private company, was incorporated in May 1952, with a fully paid-up capital of $1,000,000 divided into 1,000 shares of $1,000 each. The objects of the company were to carry on business as rubber planters and estate owners. The subscribers to the Memorandum of Association were Ng Eng Hiam, the petitioner, and Ng Chin Siu, both prominent landowners of Kuala Lumpur. Each of them, with members of their respective families, holds 50 per cent of the shares. It had been agreed that the petitioner and Ng Chin Siu should have equal rights of management and voting powers. The articles of association were accordingly so drawn up that they, the heads of each family, became permanent directors but the chairman was disentitled to a further or casting vote, while restrictions placed on the transfer of shares further ensured parity of voting strength at all times, except in the event of a member or members of one family defecting to the other, which has not yet occurred in the history of the company.

Between 1952 and 1956 the company acquired three rubber estates totalling a little